IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

WRIT PETITION NO. 716 OF 1994.

Sanjay Bachav ... Petitioner.

V/s.

The Municipal Corporation
of City of Nashik and ors. ... Respondents.

Shri S.B. Khot for the petitioner.

Shri R.V. More for respondent No.1.

CORAM : V.C.DAGA, J.

DATED :29.11.2005.

P.C. :

. This petition under Articles 226 and 227 of the Constitution of India is directed against the order passed by the Industrial Court on 18.12.1993, in Complaint (ULP) No. 306 of 1993.

2. The petitioner in this petition is seeking declaration that seniority list of Degree holders and Diploma Holder- Assistant Engineers of the Municipal Corporation of Nasik- Respondent No.1 dated 7.9.1993 be declared as true and correct final seniority list and consequently, the combined seniority list of degree holders, diploma holders dated 7.7.1993 be quashed and set aside.

Facts:

2. Factual matrix reveals that on 1.1.1992 joint seniority list of degree holders and diploma holders was published on the basis of date on which the candidates assumed charge of their posts i.e. joining date. The petitioner was shown at Sr. No.15.

3. The respondent No.1 bifurcated the seniority list as between degree and diploma holders in viwe of the representation made by some Assistant Engineers. Consequently, petitioner was shown at Sr. No.3 in the list of degree holder-Assistant Engineers keeping in view the date of joining.

4. Some of the degree holders Assistant Engineers again made joint application for revision of the seniority list on the basis of Rule 4(2) of the Maharashtra Civil Services (Regulation of Seniority) Rules, 1982, as also on the basis of Resolution No. 32 dated 28.5.1990 adopted by the respondent No.1-Corporation.

5. The respondent No.1- Corporation accepted the representation on 7.9.1993 and amended the seniority list wherein the petitioner was shown at Sr..No.10 in the new seniority list. Petitioner

made representation on 10.9.1993 against the new seniority list which was never replied by the Corporation.

6. Petitioner, in the above circumstances, filed a complaint on 11.11.1993 being Complaint (ULP) No. 306 of 1993 in the Industrial Court, Nashik, joining all the affected parties as non-applicants to the complaint.

7. The Industrial Court, pursuant to the rival pleadings was pleased to frame issues viz. (1) " Whether respondent No.1 has committed unfair labour practice as contemplated by Item V of Schedule IV of the MRTU & PULP Axct, 1971 and (2) " Whether seniority of the petitioner-complainant was changed for his union activity and with a view to discourage right of organisation or showing discard amongst other employees".

8. The Industrial Court recorded evidence of the rival parties. Thereafter by a reasoned order and judgment, both the issues were answered in the negative i.e. against the petitioner- complainant. It was held that the seniority list which was prepared was in accordance with the rules and no unfair labour practice was committed by the respondent- Corporation.

9. Being aggrieved by the aforesaid judgment and order dated 18.12.1993, present petition has been filed by the complainant under Article 227 of the Constitution of India, joining affected parties as respondent.

Submission:

10. At the outset, the learned Counsel appearing for the respondents raised a preliminary objection contending that during pendency of the petition; it came to be dismissed against respondent Nos. 7,8 and 9 as per order of the Additional Registrar dated 20th March 1997. With the result, impugned order has become final against those respondents. He submits that, if this petition is heard and, ultimately, allowed, it would not be possible for this Court to pass adverse order affecting seniority of respondents Nos. 6,7, 8 and 9 since the petition has already been dismissed against them. If that be so, it would not be possible to determine the seniority of the petitioner and put him above those respondents against whom petition has already been dismissed. He, thus, submits that if this petition is allowed, it will give rise to two inconsistent orders which is not permissible in law. He relied upon judgment of this Court in the case of **Sheela**

vs. C.B.I. 1998 (1) Mah.L.J. 928. He, thus, submits that before proceeding with petition, it is necessary to decide the preliminary objection raised in this behalf.

11. In reply, learned Counsel for the petitioner submitted that respondent Nos. 5 and 6 have left employment of the Corporation and, therefore, dismissal of the petition against them is of no consequence. She further submits that if this petition is dismissed against respondent Nos. 6,7,8 and 9, in that event, relief can be claimed against remaining respondents. At any rate, petition cannot be dismissed.

Consideration:

12. I have heard rival parties on the preliminary objection. The preliminary objection raised by the respondents is liable to be sustained. It is not in dispute that this petition has been dismissed against respondent Nos. 6,7,8 and 9 as per order of the Additional Registrar dated 20.3.1997. No revision was filed against the said order within 15 days. With the result, order has become final and conclusive. As a corollary of the said order, if petition is dismissed against respondent Nos. 6,7,8 and 9 then impugned order has

become final and conclusive against them. Therefore, in no case their seniority can be affected even if this petition is allowed. If that be so, it is bound to give rise to two inconsistent orders which is not permissible in law. Learned Counsel for the respondents has rightly relied upon judgment in case of Sheela vs. C.B.I. (cited supra).

13. In the above view of the matter, petition is liable to be dismissed. Rule is thus discharged with no order as to costs.